IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PATENT APPLICATION OF:	Hannes EBERLE *et al.*
SERIAL NO.:	09/661,375
ATTORNEY DOCKET NO:	067220-0312764 (*23453-020*)
FILING DATE:	September 13, 2000
ART UNIT:	2654
EXAMINER	Martin Lerner
FOR:	SYSTEM AND METHOD FOR THE CREATION AND AUTOMATIC DEPLOYMENT OF PERSONALIZED, DYNAMIC AND INTERACTIVE VOICE SERVICES, WITH SYSTEM AND METHOD THAT ENABLE ON-THE-FLY CONTENT AND SPEECH GENERATION

SUPPLEMENTAL BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

Further to the "*Notification of Non-Compliant Appeal Brief*" mailed **March 12, 2007**, Appellants respectfully submit this Supplemental Appeal Brief pursuant to 37 C.F.R. § 41.37.

This Supplemental Appeal Brief is being timely filed within **thirty (30) days** of the mailing date of the "Notification of Non-Compliant Appeal Brief." Accordingly, it is believed that no fees are due in connection with the filing of this Supplemental Appeal Brief. In the event that it is determined that fees are due, however, the Director is hereby authorized to charge the undersigned's Deposit Account No. 033975 (**Ref. No. 067220-0312764**).

REQUIREMENTS OF 37 C.F.R. § 41.37

I. REAL PARTY IN INTEREST - *37 C.F.R. § 41.37(c)(1)(i)*

By virtue of the Assignment recorded November 20, 2000 at reel 011256, frame 0344, the real party in interest is Microstrategy, Incorporated.

II. RELATED APPEALS AND INTERFERENCES - *37 C.F.R. § 41.37(c)(1)(ii)*

To the best of Appellants' knowledge, the following listing of related appeals is current as of April 10, 2007 - the filing date of this Supplemental Appeal Brief. Any changes in status will be noted in the Reply Brief, and thereafter via Addendums to this Supplemental Appeal Brief as appropriate.

The above-referenced application claims priority to U.S. Provisional Application Serial No. 60/153,222, filed September 13, 1999, entitled "SYSTEM AND METHOD FOR THE CREATION AND AUTOMATIC DEPLOYMENT OF PERSONALIZED, DYNAMIC AND INTERACTIVE VOICE SERVICES."

Microstrategy, Incorporated is further pursuing Appeals to the Board of Patent Appeals and Interferences in the cases identified below, each of which also claim priority to U.S. Provisional Application Serial No. 60/153,222, filed September 13, 1999:

(1) U.S. Application Serial No. 09/454,601, filed December 7, 1999, entitled "SYSTEM AND METHOD FOR REAL-TIME, PERSONALIZED, DYNAMIC, INTERACTIVE VOICE SERVICES FOR INVENTORY-RELATED INFORMATION." Appellants' Reply Brief and Request for Oral Hearing were filed on October 23, 2006.

(2) U.S. Application Serial No. 09/454,597, filed December 7, 1999, entitled

"SYSTEM AND METHOD FOR REAL-TIME, PERSONALIZED, DYNAMIC, INTERACTIVE VOICE SERVICES FOR CORPORATE-ANALYSIS RELATED INFORMATION." A Supplemental Brief on Appeal was filed on March 22, 2007.

(3) U.S. Application Serial No. 11/005,507, filed December 7, 2004, entitled "SYSTEM AND METHOD FOR THE CREATION AND AUTOMATIC DEPLOYMENT OF PERSONALIZED, DYNAMIC, AND INTERACTIVE VOICE SERVICES, WITH TELEPHONE-BASED SERVICE UTILIZATION AND CONTROL." Appellant's Brief on Appeal was filed on February 23, 2007.

III. STATUS OF CLAIMS - *37 C.F.R. § 41.37(c)(1)(iii)*

Pending: Claims 27-36 and 38-45 are pending.

Cancelled: Claims 1-26, 37, and 46-48 are cancelled.

Rejected: Claims 27-36 and 38-45 stand rejected.

Allowed: No claims have been allowed.

On Appeal: Claims 27-36 and 38-45 are appealed.

IV. STATUS OF AMENDMENTS - *37 C.F.R. § 41.37(c)(1)(iv)*

No amendments have been filed subsequent to the Final Office Action mailed July 19, 2006 (hereinafter "Final Action").

V. SUMMARY OF CLAIMED SUBJECT MATTER - *37 C.F.R. § 41.37(c)(1)(v)*

The following exemplary citations to the Specification and drawing figures are not exclusive, as other examples of support for the claimed subject matter exist. As such, the following citations should not be viewed as limiting.

A. Independent Claim 27.

One aspect of Appellants' invention relates to a method for generating an interactive voice broadcast [Specification, *e.g.*, pg. 1, lines 2-6; pg. 3, lines 3-5; pg. 6, lines 5-13; and pg. 9, lines 2-6].

According to an aspect of the invention, at least one voice service may be provided, to which a plurality of users may subscribe, that can output personalized content during an interactive voice broadcast [Specification, *e.g.*, pg. 3, lines 10-12; pg. 21, line 17 – pg. 22, line 13; pg. 26, lines 10+; pg. 29, lines 10+; and FIGS. 1A, 1B, and 3A].

One aspect of Appellants' invention comprises generating content for the at least one voice service when the at least one voice service is executed [Specification, *e.g.*, pg. 4, line 11 – pg. 5, line 18; pg. 23, lines 5–10; pg. 36, line 13 – pg. 37, line 16; and FIGS. 1C, 3A-3C, and 8].

One aspect of Appellants' invention comprises generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber and further comprises one or more input elements embedded in the unique active voice page used to request input from the subscriber [Specification, *e.g.*, pg. 5, lines 6-18; pg. 6, line 7 – pg. 7, line 4; pg. 12, lines 1-9; pg. 27, lines 1-4; pg. 33, line 6+; pg. 36, line 18+; pg. 38, lines 4-12; pg. 43, line 14+; pg. 49, lines 19+; and FIGS. 1B, 1C, 2, 4, & 7-9].

One aspect of Appellants' invention comprises initiating an outbound communication to the subscriber to establish an interactive voice broadcast with the subscriber [Specification, *e.g.*, pg. 5, line 19 – pg. 6, line 4; pg. 38, lines 1-4; and FIGS. 1C, 3A, 3C, 8, and 9].

One aspect of Appellants' invention comprises dynamically interacting with the subscriber in real-time during the interactive voice broadcast by presenting personalized content

to the subscriber from the subscriber's unique active voice page, and by enabling the subscriber to respond to the personalized content via the one or more input elements embedded in the subscriber's unique active voice page [Specification, *e.g.*, pg. 6, line 5 – pg. 7, line 4; and pg. 38, lines 4-12].

B. Independent Claim 28.

Independent claim 28 includes means plus function recitations. Pursuant to 37 C.F.R. § 41.37(c)(1)(v), Appellants have identified below non-limiting examples of structure corresponding to each means plus function recitation with reference to the specification by page and line number, and to the drawings by reference character.

One aspect of Appellants' invention relates to a system for generating an interactive voice broadcast [Specification, *e.g.*, pg. 1, lines 2-6; pg. 3, lines 3-5; pg. 6, lines 5-13; and pg. 9, lines 2-6].

Independent claim 28 recites: "means for providing at least one voice service, to which a plurality of users may subscribe, that can output personalized content during an interactive voice broadcast." In one implementation, the "means for providing at least one voice service..." may comprise, for example, one or more components of Voice Service Server (16), call server (18), and/or subscription interface (20) as illustrated in FIG. 3A. These components may comprise a system through which subscribers request data and reports in a variety of ways, and are provided with the results through an Interactive Voice Broadcast (IVB) [Specification, *e.g.*, pg. 39, lines 9-12; pg. 40, lines 3+; and FIGS. 3A-3C, and 8].

Independent claim 28 recites: "means for generating content for the at least one voice service when the at least one voice service is executed." In one implementation, the "means for generating content..." may comprise, for example, *at least* Voice Service Server (VSS) (16) as

illustrated in FIGS. 3A and 3B. VSS (16) may comprise an administrator console (161), voice service API (162), and backend server (163) [Specification, *e.g.*, pg. 42, lines 7-9; and FIGS. 3A-3B]. Backend server (163) comprises report formatter (1631), personalization engine (1632), scheduler (1633) and SQL engine (1634). Report formatter (1631), personalization engine (1632), and scheduler (1633) operate together, utilizing the parameters entered through administrator console (161), to initiate and assemble voice services for transmission through a call server (18) [Specification, *e.g.*, pg. 45, lines 1-16].

Independent claim 28 recites: "means for generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content, and further comprises one or more input elements embedded in the unique active voice page used to request input from the subscriber." In one implementation, the "means for generating a unique active voice page for each subscriber of the at least one voice service..." may comprise, for example, *at least* VSS (16) as described above and as shown in FIGS. 3A and 3B. In particular, report formatter (1631), personalization engine (1632), and scheduler (1633) operate together, utilizing the parameters entered through administrator console (161), to initiate and assemble voice services for transmission through a call server (18) [Specification, *e.g.*, pg. 45, lines 1-16]. In various implementations, the application of subscriber-specific personalization information (claim 28) may occur, for example, via *at least* call settings module (1614) and/or personalization engine (1632) [Specification, *e.g.*, pg. 41, lines 13-16; pg. 43, line 14 – pg. 44, line 3; and FIG. 3B].

Independent claim 28 recites: "means for initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber." In one implementation, the "means for initiating an outbound communication..." may comprise, for

example, a call server (18). Call server (18) comprises a call builder (1813) (*see* FIGS. 3C and 8) that initiates and conducts a telephone call to a user. More particularly, call builder (1813) may dial and establish a connection with a user and pass user input through to markup language parsing engine (1812). Call builder (1813) may be used for device detection, line monitoring for user input, call session management, potential transfer of call to another line, termination of a call, and other functions [Specification, *e.g.*, pg. 36, lines 3-4; pg. 47, lines 3-9; and FIGS. 3A, 3C, and 8].

Independent claim 28 recites: "means for dynamically interacting with the subscriber in real-time during the subscriber's interactive voice broadcast by presenting the personalized content to the subscriber from the subscriber's unique active voice page, and by enabling the subscriber to respond to the personalized content via the one or more input elements embedded in the subscriber's unique active voice page." In one implementation, the "means for dynamically interacting with the subscriber in real-time during the interactive voice broadcast..." may comprise, for example, call server (18) as described above, and user response module (1815) [Specification, *e.g.*, pg. 46, lines 3+; and FIGS. 3A, 3C, and 8]. User response module (1815) may store user responses and pass them to intelligence server (16). During a telephone call, a user may be prompted to make choices in response to system prompts. Responses may be processed during the call or after, by the system or by being passed to another application [Specification, *e.g.*, pg. 48, lines 3 – 13; and FIGS. 3C and 8].

C. Dependent Claims 33, 36, 42, and 45.

Claims 33, 36, 42, and 45 are dependent claims argued separately. Dependent claim 45 recites "means for" language. Accordingly, pursuant to 37 C.F.R. § 41.37(c)(1)(v), for dependent claim 45, Appellants have identified below a non-limiting example of structure

corresponding to the means plus function recitation with reference to the specification by page and line number, and to the drawings by reference character.

1. Dependent Claim 33.

Dependent claim 33 further recites that "the generated content includes information derived from an on-line analytical processing (OLAP) system" [Specification, *e.g.*, pg. 39, line 9 – pg. 40, line 2; and FIG. 3A].

2. Dependent Claim 36.

Dependent claim 36 further recites "initiating an outbound communication to a subscriber comprises initiating an outbound telephone call" [Specification, *e.g.*, pg. 46, lines 3-8; pg. 47, lines 3-9; and FIG. 3C and FIG. 9].

3. Dependent Claim 42.

Dependent claim 42 further recites that "the generated content includes information derived from an on-line analytical processing (OLAP) system" [Specification, *e.g.*, pg. 39, line 9 – pg. 40, line 2; and FIG. 3A].

4. Dependent Claim 45.

Dependent claim 45 further recites that "the means for initiating an outbound communication to a subscriber comprises means for initiating an outbound telephone call." In one implementation, the "means for initiating an outbound telephone call" may include a call server (18) having a call builder (1813), as illustrated in FIG. 3A, that may perform device detection, line monitoring for user input, call session management, potential transfer of call to

another line, or termination of a call, among other functions [Specification, *e.g.*, pg. 36, lines 3-4; pg. 47, lines 3-9; and FIGS. 3A, 3C, and 8].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL - *37 C.F.R. § 41.37(c)(1)(vi)*

A. Claims 27-28, 34-35, and 43-44 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,246,672 to Lumelsky ("Lumelsky") in view of U.S. Patent No. 6,539,359 to Ladd *et al.* ("Ladd") [Final Action, pg. 2].

B. Claims 29-33, 36, 38-42, and 45 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Lumelsky and Ladd, further in view of U.S. Patent No. 6,430,545 to Honarvar *et al.* ("Honarvar") [Final Action, pg. 6].

VII. ARGUMENT - *37 C.F.R. § 41.37(c)(1)(vii)*

The rejection of each of claims 27-36 and 38-45 should be reversed because the Examiner has failed to establish a *prima facie* case of obviousness. More particularly, the references relied upon, either alone or in combination, fail to disclose, teach, or suggest every feature of the claimed invention. For at least these reasons, the rejection is legally improper and should be reversed.

A. Claims 27-28, 34-35, and 43-44 are Patentable Over Lumelsky in View of Ladd.

With regard to the Examiner's **first** ground of rejection, claims 27-28, 34-35, and 43-44 are patentable over Lumelsky in view of Ladd for the following reasons.

1. Independent Claims 27-28.

Independent claims 27 and 28 each recite, *inter alia*, the features of:

elements defined for each voice service" [Specification, *e.g.*, pg. 5, lines 7-10]. Furthermore, an "active voice page" may include, or link to, content from other active voice pages, where a user can navigate within or between active voice pages using a call structure that is "unique" to the user [Specification, *e.g.*, pg. 37, lines 5-16]. Accordingly, a "unique active voice page," as recited in claims 27-28, provides a call structure for controlling interaction between a server and various users in a customizable manner for each user [Specification, *e.g.*, pg. 5, lines 10-19; pg. 6, lines 5-20].

By contrast, in Lumelsky, a CES-based file contains "voice and text [as] two interdependent data streams" [Lumelsky, col. 10, lines 20-25]. The streams, which represent authored content, are encoded into a CES data file [Lumelsky, col. 10, lines 40-62]. However, the CES-based files do not contain a call structure, or any other mechanism, for controlling interaction between a system and a user. Furthermore, the content of one CES-based file is independent of content in other CES-based files, such that Lumelsky does not disclose, teach, or suggest a CES-based file capable of providing the features of an "active voice page." Rather, CES-based files are independent sources of content that are delivered to users by singlecast, which is a unidirectional and non-interactive communication, and the CES-based files cannot be personalized for various users [Lumelsky, Abstract].

Furthermore, the Examiner acknowledges that CES-based files do not possess the claimed characteristics of a "unique active voice page." For example, the Examiner acknowledges that Lumelsky "does not expressly disclose that a subscriber is enabled 'to respond to the personalized content via one or more input elements embedded in the active voice page'" [Final Action, pg. 4]. Nonetheless, the Examiner continues to allege that a CES-based file, as disclosed by Lumelsky, teaches the claimed "unique active voice page" in spite of the acknowledged distinctions therein.

> ...generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content, and further comprises one or more input elements embedded in the unique active voice page used to request input from the subscriber;
>
> ...
>
> ...initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber;

Assuming *arguendo* that there was a legally proper teaching, suggestion, or motivation to combine Lumelsky and Ladd in the manner alleged by the Examiner, the two references, even if combined, fail to disclose, teach, or suggest *at least* the foregoing features.

a. ***The combination of Lumelsky and Ladd fails to disclose, teach, or suggest "...generating a unique active voice page for each subscriber of the at least one voice service."***

In the Final Action, the Examiner appears to allege that a composite encoded speech (CES) file, as disclosed by Lumelsky, corresponds to the claimed "unique active voice page," as recited in claims 27-28 [Final Action, pgs. 3, 8-9]. More particularly, the Examiner alleges that a CES-based file, which includes authored content created using a CES editor, teaches a "unique active voice page," which includes a call structure for controlling interaction between a system and various users. The rejection is improper for at least the reason that the Examiner has misapplied Lumelsky to the claimed invention, as the characteristics of a "unique active voice page," as recited in claims 27-28, are distinct from those of a CES-based file, as disclosed by Lumelsky.

In Appellants' invention, an active voice page (AVP) "contains the call structure and data, voice style parameters for the user and personal identification information designated for the user. The AVP contains data at various hierarchical levels that are defined by the Dialog

For at least the foregoing reasons, a "unique active voice page," as recited in claims 27-28, possesses various distinguishing characteristics over CES-based files, as disclosed by Lumelsky. For example, CES-based files cannot govern interaction between a user and a system, cannot be customized for various users, and cannot be made interdependent. Ladd fails to cure these deficiencies of Lumelsky. Accordingly, the rejection is improper, and should be reversed, because the combination of Lumelsky and Ladd fails to disclose, teach, or suggest at least this feature of the claimed invention.

b. ***The combination of Lumelsky and Ladd fails to disclose, teach, or suggest "generating a unique active voice page..., wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content."***

In the Final Action, the Examiner appears to allege that a collection of CES-based files assembled according to a user profile corresponds to the claimed "unique active voice page [comprising] personalized content created by applying subscriber-specific personalization information for a subscriber" [Final Action, pg. 3, 8-9]. More particularly, the Examiner alleges that "a user's list of topics of interest defines 'a unique active voice page'" [Final Action, pg. 3]. The rejection is improper for at least the reason that the Examiner has misapplied Lumelsky to the claimed invention, as "applying subscriber-specific personalization information for a subscriber to the generated content," as recited in claims 27-28, is distinct from assembling CES-based files according to a user profile, as disclosed by Lumelsky.

In Appellants' invention, "subscriber-specific personalization information for a subscriber" may include user defined filters, metrics, metadata, or other personalization criteria [Specification, *e.g.*, pg. 40, line 19 – 41, line 7]. The "personalization information" may enable each subscriber to establish a login alias, which may be used to generate content according to

user-specific criteria [Specification, *e.g.*, pg. 41, lines 8-14]. Furthermore, the "personalization information" may be used to apply filters and run applications against the generated content, thereby creating "personalized content," which may be used during an interactive voice broadcast to enable a user to interact with unique, personalized data [Specification, *e.g.*, pg. 41, lines 17-21]. For example, a "unique active voice page" may personalize stock quote data according to a user portfolio so that the user can buy or sell personally held stocks [Specification, *e.g.*, pg. 24, line 1 – pg. 26, line 5]. As such, distinctions exist between "personalized content" and "generated content," as recited in claims 27-28, because "personalized content [is] created by applying subscriber-specific personalization information for a subscriber to the generated content."

By contrast, Lumelsky discloses assembling CES-based files according to a user's list of topics, where "the user will receive all information listed in the user's list of topics, but only that information pertaining to the user selected topics [Lumelsky, col. 11, lines 5-13]. The Examiner alleges that this assembly teaches "applying subscriber-specific personalization information for a subscriber to the generated content," as recited in claims 27-28. However, at best, such assembly relates to generating content for a voice service (e.g., a personal radio station server [PRSS]) upon execution of the voice service. There is no disclosure, teaching, or suggestion of "applying subscriber-specific personalization information" to the assembled CES-based files. Rather, the CES-based files are assembled and forwarded to the user as-is, without customizing, modifying, or otherwise "personalizing" the content included therein. The portions of Lumelsky dealing with "personalization" [*e.g.*, col. 10, line 63 – col. 11, line 30; col. 17, line 30 – col. 18, line 43] relate to user specified topics of interest and/or playback preferences. However, content generated for a PRSS is not "personalized...by applying subscriber-specific personalization information for a subscriber" because the content provided to the user is the same as that

generated for the PRSS. Accordingly, Lumelsky does not disclose, teach, or suggest at least this feature of the claimed invention.

The Examiner alleges that Lumelsky teaches "applying subscriber-specific personalization information" because a CES-based "data file [inherently] contains information about the topic of the CES-based file" [Final Action, pg. 9]. The Examiner further alleges that "one skilled in the art would recognize that each CES-based file must contain a topic or topics, inherently, in order for a user to be able to search for a CES-based file" [Final Action, pg. 9]. In presenting this argument, the Examiner appears to allege that searching a data repository for CES-based files that match topics of interest for a user teaches "applying subscriber-specific personalization information to" the assembled CES-based files. However, this misapplies Lumelsky because searching for a data file according to a user profile does not generate "personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content." At best, Lumelsky discloses generating content for a PRSS according to a user profile, but the content of the PRSS is not "personalized content," as recited in claims 27-28.

For at least the foregoing reasons, a "unique active voice page," as recited in claims 27-28, possesses various distinguishing characteristics over CES-based files, as disclosed by Lumelsky. For example, "a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content." By contrast, in Lumelsky, when content is generated for a PRSS by assembling one or more CES-based files, the generated content is the same as originally authored. The content generated for a PRSS is subsequently provided to the user without "applying subscriber-specific personalization information for a subscriber to the generated content," as recited in claims 27-28. Ladd fails to cure this deficiency of Lumelsky. Accordingly, the rejection is improper, and

should be reversed, because the combination of Lumelsky and Ladd fails to disclose, teach, or suggest at least this feature of the claimed invention.

c. ***The combination of Lumelsky and Ladd fails to disclose, teach, or suggest "...generating a unique active voice page..., wherein a unique active voice page comprises...one or more input elements embedded in the unique active voice page used to request input from the subscriber."***

In the Final Action, the Examiner appears to acknowledge Lumelsky fails to disclose that "a unique active voice page comprises...one or more input elements embedded in the unique active voice page used to request input from the subscriber" [Final Action, pg. 4, "*Lumelsky* does not expressly disclose that a subscriber is enabled 'to respond to the personalized content via one or more input elements embedded in the active voice page"]. However, the Examiner alleges that "it is well known for web pages to provide interactive speech applications using VoxML™ for permitting a user into [*sic*] interact with links on a displayed web page through voice commands" [Final Action, pg. 5]. Thus, the Examiner alleges that "an INPUT element of an application using VoxML™ is equivalent to 'one or more input elements embedded in the active voice page'" [Final Action, pg. 5].

The rejection is improper for at least the reason that the Examiner has misapplied Ladd, as claims 27-28 recite "one or more input elements embedded in the unique active voice page." That is, the "one or more input elements" are a feature of the "unique active voice page." By contrast, the Examiner alleges that the CES-based files of Lumelsky teach a "unique active voice page," while a voice browser implementing VoxML™, as disclosed by Ladd, teaches the "one or more input elements." The Examiner acknowledges that the CES-based files do not have "one or more input elements embedded" therein, but nonetheless alleges that such a feature would have

been obvious in light of a browser application implementing a markup language supporting input elements, as taught by Ladd.

Assuming *arguendo* that the Examiner's characterizations of the references are correct, the combination of references still fails to disclose, teach, or suggest "one or more input elements embedded in the unique active voice page," as recited in claims 27-28. This is because the Examiner alleges that Lumelsky teaches a "unique active voice page" in the form of a CES-based file [Final Action, pg. 3]. However, Ladd does not disclose, teach, or suggest embedding input elements in CES-based files or other preexisting data files, but rather, relates to a markup language for creating documents that provide interactive services [Ladd, Abstract]. Furthermore, Lumelsky does not disclose, teach, or suggest that CES-based files are capable of being modified to embed input elements, or any other element, of a markup language. As such, the Examiner's alleged combination of Lumelsky and Ladd must fail because the combination, even if proper, does not disclose, teach, or suggest "one or more input elements embedded in the unique active voice page," as recited in claims 27-28.

For at least the foregoing reasons, a "unique active voice page," as recited in claims 27-28, possesses various distinguishing characteristics over CES-based files, as disclosed by Lumelsky. For example, "a unique active voice page comprises...one or more input elements embedded in the unique active voice page." While the Examiner acknowledges that Lumelsky does not disclose, teach, or suggest CES-based files having this feature, Ladd fails to cure this deficiency of Lumelsky because Ladd relates to a markup language for creating documents rather than a mechanism for embedding markup language elements in preexisting documents. Assuming *arguendo* that a document implemented in the markup language of Ladd can incorporate a CES-based file, such a combination would nonetheless lead to the conclusion that a CES-based file is not a "unique active voice page," as alleged by the Examiner. Accordingly, the

rejection is improper, and should be reversed, for at least the reason that the combination of Lumelsky and Ladd fails to disclose, teach, or suggest at least this feature of the claimed invention.

d. ***The combination of Lumelsky and Ladd fails to disclose, teach, or suggest "...initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber."***

In the Final Action, the Examiner appears to allege that transmitting content to a subscriber upon the subscriber's request, as disclosed by Lumelsky, teaches "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber," as recited in claims 27-28. More particularly, the Examiner alleges by using "push technology" to deliver content to a user, Lumelsky "implicitly...involves 'initiating an outbound communication to the subscriber'" [Final Action, pgs. 3-4]. The rejection is improper for at least the reason that the Examiner has misapplied Lumelsky to the claimed invention, as delivering content in response to a user request is distinct from "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber," as recited in claims 27-28.

In Appellant's invention, "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber" includes a call server querying a database to deliver active voice pages to users [Specification, *e.g.*, pg. 36, lines 5-10; pg. 37, line 17 – pg. 38, line 4]. An interactive voice broadcast is established when the call server initiates communication with the subscriber, such as by placing a telephone call to the subscriber [Specification, *e.g.*, pg. 38, lines 1-4]. The call server includes various hardware and software components for establishing communication sessions, among other things [Specification, *e.g.*, pg.

47, lines 3-9]. Accordingly, the server "initiates an outbound communication to the subscriber to establish an interactive voice broadcast with the subscriber," as recited in claims 27-28.

By contrast, Lumelsky requires that users establish a communication session in order to retrieve content [Lumelsky, *e.g.*, col. 10, lines 63-64; col. 11, lines 48-50; and col. 11, lines 38-42, "The user initiates a communications session"]. Lumelsky consistently indicates that content is delivered to users "upon their request" [Lumelsky, Abstract]. Thus, in Lumelsky, the user initiates communication with a server to establish a communication session, and appropriate CES-based files are subsequently forwarded to the user terminal. Therefore, Lumelsky does not disclose, teach, or suggest "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber" for at least the reason that Lumelsky requires communication sessions be established by user-initiated communications, which are not "outbound...to a subscriber," as recited in claims 27-28.

In the Final Action, the Examiner alleges that "'initiating an outbound communication to a subscriber' should be broadly interpreted in accordance with principles of broadest reasonable interpretation" [Final Action, pg. 10]. More particularly, the Examiner alleges that "simply logging on to establish a session by a calling user does not preclude a further outbound communication being later initiated by a server under push technology" [Final Action, pg. 10]. The Examiner's assertion is incorrect because Lumelsky unequivocally indicates that sessions are established by a calling user, which cannot be reasonably interpreted as "initiating an outbound communication to a subscriber to establish" the session. It is not reasonable, and contrary to logic, to interpret a user-initiated communication that establishes a session as being an "outbound communication to a subscriber." Even if Lumelsky is read as having a server initiate an outbound communication in response to a subscriber request, such outbound communication

would not "establish an interactive voice broadcast with the subscriber" because Lumelsky discloses establishing the communication session by the inbound subscriber request.

Furthermore, the Examiner alleges that claim differentiation precludes an interpretation of claims 27-28 "as requiring that the server places a call to the subscriber" [Final Action, pgs. 10-11]. More particularly, the Examiner alleges that claims 36 and 45 preclude such an interpretation under the claim differentiation doctrine, where claims 36 and 45 recite "initiating an outbound communication to a subscriber comprises initiating an outbound telephone call." However, the Examiner's reliance on claim differentiation is misplaced, as the doctrine stands for the assumption that two claims in the same patent will not have identical scope. Thus, the Examiner's argument is improper because claims 36 and 45 can be differentiated from claims 27 and 28 without restricting the interpretations of claims 27 and 28 in the manner alleged by the Examiner. For example, claims 27-28 recite "initiating an outbound communication to a subscriber," whereas claims 36 and 45 recite the "outbound communication" being "an outbound telephone call." A "communication" is subject to a broader interpretation than "telephone call," and therefore, the claims can be interpreted differently without restricting the interpretation of claims 27-28 in the manner alleged.

For at least the foregoing reasons, "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber," as recited in claims 27-28, is not disclosed, taught, or suggested by Lumelsky. Lumelsky only discloses user-established communication sessions, which cannot be reasonably interpreted as a "communication to a subscriber to establish an interactive voice broadcast." The rejection is improper for at least the reason that the Examiner is imparting a contradictory meaning to the claim features in question. Even assuming *arguendo* that the Examiner's characterizations of Lumelsky are correct, such characterizations do not disclose, teach, or suggest "initiating an outbound communication to a

subscriber to establish an interactive voice broadcast with the subscriber," as recited in claims 27-28. Ladd fails to cure this deficiency of Lumelsky. Accordingly, the rejection is improper, and should be reversed, for at least these reasons.

2. Dependent Claims 34-35 and 43-44.

Claims 34-35 and 43-44 are allowable for at least the reason that they depend from and add features to allowable independent claims 27 and 28, respectively. Therefore, the rejections of these claims are likewise improper for at least the same reasons as discussed above for independent claims 27-28.

B. Dependent Claims 29-33, 36, 38-42, and 45 are Patentable Over Lumelsky and Ladd, further in view of Honarvar.

With regard to the Examiner's **second** ground of rejection, dependent claims 29-33, 36, 38-42, and 45 are patentable over Lumelsky and Ladd, further in view of Honarvar for the following reasons.

1. Dependent Claims 33 and 42.

In the Final Action, the Examiner appears to acknowledge that neither Lumelsky nor Ladd disclose, teach, or suggest "the generated content includ[ing] information derived from an on-line analytical processing (OLAP) system," as recited in claims 33 and 42. The Examiner alleges that this feature is taught by Honarvar, which teaches the use of OLAP in a rules based decision management system [Final Action, pgs. 6-7]. However, this rejection is improper, and should be reversed, because Honarvar does not disclose, teach, or suggest "the generated content

includ[ing] information derived from an on-line analytical processing (OLAP) system," as recited in claims 33 and 42.

More particularly, Honarvar is related to analyzing user activity to determine business strategies, and using OLAP to evaluate the determined strategies [Honarvar, Abstract]. While Honarvar addresses techniques for processing information using OLAP technology, Honarvar does not relate to generating content based on the determined strategies. Accordingly, Honarvar disclose, teach, or suggest that "generated content includes information derived from an on-line analytical processing (OLAP) system," as recited in claims 33 and 42. For at least this reason, the rejection is improper and should be reversed.

2. Dependent Claims 36 and 45.

In the Final Action, the Examiner appears to acknowledge that neither Lumelsky nor Ladd disclose, teach, or suggest "initiating an outbound communication to a subscriber comprises initiating an outbound telephone call," as recited in claims 36 and 45. The Examiner alleges that this feature is taught by Honarvar, which discloses a system calling a user based on rules specific to the user [Final Action, pg. 8]. However, this rejection is improper, and should be reversed, because Honarvar does not disclose, teach, or suggest "initiating an outbound communication to a subscriber comprises initiating an outbound telephone call," as recited in claims 36 and 45.

More particularly, claims 36 and 45 depend from and add features to claims 27 and 28, respectively. As such, "initiating an outbound telephone call," as recited in claims 36 and 45, is for the purpose of "establish[ing] an interactive voice broadcast with the subscriber." In Appellant's invention, an "interactive voice broadcast" (IVB) "is a voice-enabled interaction with a user having a dynamic structure controlled by the AVP for the particular user" [Specification,

e.g., pg. 6, lines 5-6]. "During an IVB, information is exchanged between the call server and a user according to the AVP" [Specification, *e.g.*, pg. 6, lines 7-8]. By contrast, Honarvar only addresses rule-based processing to determine strategies or actions to take in response to the processing. There is no disclosure, teaching, or suggestion indicating that the system action is for "establishing an interactive voice broadcast," as recited in claims 36 and 45 by virtue of depending from claims 27 and 28. For at least this reason, the rejection is improper and should be reversed.

3. Dependent Claims 29-32 and 38-41.

Claims 29-32 and 38-41 are allowable for at least the reason that they depend from and add features to allowable independent claims 27 and 28, respectively. Therefore, the rejections of these claims are likewise improper for at least the same reasons as discussed above for independent claims 27-28.

VIII. CLAIMS APPENDIX - *37 C.F.R. § 41.37(c)(1)(viii)*

The pending claims (claims 27-36 and 38-45) are attached in **APPENDIX A**.

IX. EVIDENCE APPENDIX - *37 C.F.R. § 41.37(c)(1)(ix)*

APPENDIX B: None.

X. RELATED PROCEEDINGS INDEX - *37 C.F.R. § 41.37(c)(1)(x)*

APPENDIX C: None.

CONCLUSION

For at least the foregoing reasons, Appellants request that the rejection of claims 27-36 and 38-45 under 35 U.S.C. § 103(a) be reversed.

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APPENDIX A

CLAIMS APPENDIX - *37 C.F.R. § 41.37(c)(1)(vii)*

1-26. **(Cancelled)**

27. **(Previously Presented)** A method for generating an interactive voice broadcast, comprising:

providing at least one voice service, to which a plurality of users may subscribe, that can output personalized content during an interactive voice broadcast;

generating content for the at least one voice service when the at least one voice service is executed;

generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content, and further comprises one or more input elements embedded in the unique active voice page used to request input from the subscriber;

initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber; and

dynamically interacting with the subscriber in real-time during the subscriber's interactive voice broadcast by presenting the personalized content to the subscriber from the subscriber's unique active voice page, and by enabling the subscriber to respond to the personalized content via the one or more input elements embedded in the subscriber's unique active voice page.

28. (**Previously Presented**) A system for generating an interactive voice broadcast, comprising:

means for providing at least one voice service, to which a plurality of users may subscribe, that can output personalized content during an interactive voice broadcast;

means for generating content for the at least one voice service when the at least one voice service is executed;

means for generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content, and further comprises one or more input elements embedded in the unique active voice page used to request input from the subscriber;

means for initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber; and

means for dynamically interacting with the subscriber in real-time during the subscriber's interactive voice broadcast by presenting the personalized content to the subscriber from the subscriber's unique active voice page, and by enabling the subscriber to respond to the personalized content via the one or more input elements embedded in the subscriber's unique active voice page.

29. (**Previously Presented**) The method of claim 27, wherein the at least one voice service is executed upon satisfaction of a predetermined condition.

30. (**Previously Presented**) The method of claim 29, wherein the predetermined condition is specified by a user while subscribing to the at least one voice service.

31. (**Previously Presented**) The method of claim 29, wherein the predetermined condition comprises a scheduled, time-based condition.

32. (**Previously Presented**) The method of claim 29, wherein the predetermined condition comprises a triggering event.

33. (**Previously Presented**) The method of claim 27, wherein the generated content includes information derived from an on-line analytical processing (OLAP) system.

34. (**Previously Presented**) The method of claim 27, wherein an active voice page comprises a markup language document.

35. (**Previously Presented**) The method of claim 27, wherein an input element comprises at least one of an option element or prompt element.

36. (**Previously Presented**) The method of claim 27, wherein initiating an outbound communication to a subscriber comprises initiating an outbound telephone call.

37. (**Cancelled**)

38. (**Previously Presented**) The system of claim 28, wherein the at least one voice service is executed upon satisfaction of a predetermined condition.

39. (**Previously Presented**) The system of claim 38, wherein the predetermined condition is specified by a user while subscribing to the at least one voice service.

40. (**Previously Presented**) The system of claim 38, wherein the predetermined condition comprises a scheduled, time-based condition.

41. (**Previously Presented**) The system of claim 38, wherein the predetermined condition comprises a triggering event.

42. (**Previously Presented**) The system of claim 28, wherein the generated content includes information derived from an on-line analytical processing (OLAP) system.

43. (**Previously Presented**) The system of claim 28, wherein an active voice page comprises a markup language document.

44. (**Previously Presented**) The system of claim 28, wherein an input element comprises at least one of an option element or prompt element.

45. (**Previously Presented**) The system of claim 28, wherein the means for initiating an outbound communication to a subscriber comprises means for initiating an outbound telephone call.

46-48. (**Cancelled**)

APPENDIX B

EVIDENCE APPENDIX - *37 C.F.R. § 41.37(c)(1)(ix)*

NONE.

APPENDIX C

RELATED PROCEEDINGS APPENDIX - *37 C.F.R. § 41.37(c)(1)(x)*

NONE.